

Claimant asked for additional medical treatment. Respondent authorized claimant to return to Dr. Dugan. Rather than return to Dr. Dugan, claimant filed an Application for Preliminary Hearing and requested that Dr. Prostic be designated as the treating physician. At the conclusion of the evidentiary hearing, the Assistant Director granted claimant's request.

Respondent argues that the Assistant Director violated provisions of K.S.A. 1997 Supp. 44-510(c)(1) which states in pertinent part as follows:

If the director finds, upon application of an injured employee, that the services of the health care provider furnished as provided in subsection (a) and rendered on behalf of the injured employee are not satisfactory, the director may authorize the appointment of some other health care provider. In any such case, the employer shall submit the names of three health care providers that are not associated in practice together. The injured employee may select one from the list who shall be the authorized treating health care provider.

As above indicated, the Appeals Board has concluded the respondent's appeal does not raise a jurisdictional issue subject to review. Jurisdiction is described in Allen v. Craig, 1 Kan. App. 2d 301, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977), as follows:

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly. (Citations omitted.)

Whether an administrative law judge must, in a given set of circumstances, authorize treatment from a list of three physicians designated by respondent is not a question which goes to the jurisdiction of the administrative law judge. An administrative law judge has the jurisdiction to decide this question. Briceno v. Wichita Inn West, Docket No. 211,226 (February 1997) and Graham v. Rubbermaid Specialty Products, Docket No. 219,395 (June 1997).

**WHEREFORE**, the Appeals Board finds and concludes that the appeal by the respondent should be dismissed as the Appeals Board is without jurisdiction to consider the issue raised and the Order for Medical treatment entered by the Assistant Director on July 8, 1998 should, and does, remain in effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 1998.

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BOARD MEMBER

c: C. Albert Herdoiza, Kansas City, KS  
John M. Graham, Jr., Overland Park, KS  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director